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COMMITTEE AGAINST TORTURE

Eleventh session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 167th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 16 November 1993, at 3 p.m.

Chairman: Mr. VOYAME

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* The summary record of the private part of the meeting appears as document CAT/C/SR.167/Add.1.

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The meeting was called to order at 3 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Initial report of Portugal (continued) (CAT/C/9/Add.15)

1. At the invitation of the Chairman, Mr. Henriques Gaspar, Mrs. Alves Martins, Mrs. Mota Matos, Mr. Gomes Dias, Mr. Bastos and Mrs. de Gouveia Araujo (Portugal) resumed their places at the Committee table.

2. Mr. HENRIQUES GASPAR (Portugal) said that before replying to the questions put to his delegation by members of the Committee at the previous meeting, he wished to make it clear that Portugal was a democratic and pluralistic State under the rule of law. Moreover, its legislative instruments were up to date and its institutional machinery for the protection of human rights effective and efficient.

3. The acts mentioned in article 1 of the Convention were offences under the Portuguese Penal Code; the penalties were increased if the perpetrators of torture and ill-treatment were public servants or members of the security forces. The public prosecutor's department, which was responsible for the investigation, was completely independent of the executive and administrative branches and acted strictly in accordance with the principle of legality. Its decision whether or not to proceed with a case was taken in a completely objective manner on the basis of the evidence collected during the investigation. The punishment was decided upon by the courts in accordance with the principles of humanism and equity on the basis of the facts, evidence and circumstances. Prison sentences usually ranged from a minimum of 1 month to a maximum of 21 years, but the Penal Code stated that the maximum prison sentence for the most serious cases could be 25 years.

4. With regard to the direct applicability of article 1 of the Convention, he said that the fact that the crime of torture was not yet specified as such in the Penal Code did not mean that there could be no prosecution under that Code for acts corresponding to a form of torture or ill-treatment; offenders were prosecuted and sentenced on the basis of articles 132, 144, 156, 157, 412, and 417 of the Penal Code. However, as had already been said, the Penal Code was being revised. It had been decided to include articles on the crime of torture under the heading of "Torture and other cruel, degrading or inhuman treatment". The first of those articles provided that any person responsible for the custody of detainees and for the prosecution of offenders who inflicted torture or cruel, degrading or inhuman treatment upon any such person for the purpose of obtaining from him or from another person a confession, a statement, a declaration or information, or to intimidate that person or another would be sentenced to between one and five years' imprisonment if the acts did not constitute a more serious offence. The sentence was imposed regardless of whether the person acted on his own initiative or own the order of a superior. In the draft penal code, torture and cruel, degrading and inhuman treatment were defined as any act consisting in the infliction of physical or acute mental suffering and any act entailing

the use of a chemical substance, drug or any other natural or artificial substance with the intent of seriously diminishing a person's ability to express his will freely. Another article in the draft penal code, covering the most serious crimes, provided that any person who, in the conditions set out in the previous articles, seriously impaired the physical integrity of another by means of particularly severe forms of torture (such as blows, electric shocks, mock execution or hallucinogenic substances) or habitually practised such acts, would be sentenced to a term of imprisonment of between 3 and 12 years. If the torture and ill-treatment inflicted resulted in the suicide or death of the victim, the offender could be sentenced to between 5 and 15 years' imprisonment.

5. With respect to the legislative competence of the Government in certain matters relating to citizens' rights and freedoms, he read out article 168 of the Constitution, entitled "Relatively reserved legislative powers". The article listed matters within the competence of the Assembly of the Republic save where the Government had been authorized to legislate. It specified that the laws granting authorization to legislate determined the subject, the intent, and the scope of the authorization, as well as its duration.

6. As far as the jurisdictional functions and status of judges was concerned, he referred to article 205 to 206 of the Constitution. The courts were independent and subject only to the law. The judges of the courts of law formed a single body governed by a single statute. They were irremovable and could not be transferred, suspended, retired or dismissed except as provided by law. They could not be held liable for their decisions except as provided by law.

7. In reply to Mr. Khitrin's question on the status and functioning of the public prosecutor's department, he said that the Office of the Public Prosecutor was that department's supreme organ and comprised judges who enjoyed autonomy and were independent of the other branches of Government, and in particular the executive and the Minister of Justice. Under the law its functions included the protection of legality, the representation of the State in the courts, the exercise of criminal action and the direction of criminal investigations.

8. Members of the Committee had inquired about the Provedor de Justiça or ombudsman. The Provedor was appointed in accordance with, and his activities were governed by, article 23 of the Constitution. He was elected by the Assembly of the Republic by a two-thirds majority for a period of four years and could be re-elected. He was independent of all branches of the Government, examined the complaints he received from citizens, and although he had no decision-making power, he made such recommendations as were necessary to the competent bodies in order to prevent and remedy any injustice. When a case involving a complaint came before the courts, the ombudsman could only follow the proceedings and make recommendations to speed them up. He was also authorized to visit, without prior notification, places of detention such as police stations, to speak in private with persons in custody and to take appropriate action if he observed any irregularities.

9. With regard to the disciplinary or criminal sanctions applicable to members of the police force, he explained that police officers could be brought before internal disciplinary bodies and criminal proceedings instituted by the public prosecutor's department under the Code of Criminal Procedure.

10. With respect to the question of secrecy in the administration of justice raised by Mr. Burns, he said that the principle applied was that justice should be administered in public except in the initial stages of the investigation; in other words, secrecy was maintained until the public prosecutor's department had taken a decision to prosecute. Secrecy of investigation was an inherent part of Portuguese doctrine and tradition, and was regarded as a safeguard for the accused, who was presumed innocent, and as a means of checking evidence more effectively.

11. The state of siege and state of emergency were both governed by article 19 of the Constitution on the suspension of the exercise of rights. He emphasized that, under article 19, paragraph 6 of the Constitution, the declaration of a state of siege could in no case affect the rights to life, personal dignity and identity, civil capacity and citizenship of the person, the non-retroactive nature of criminal law, the right to defence of accused persons, and the freedom of conscience and religion. The state of siege was also governed by Act No. 44/1986 of the Assembly of the Republic. In point of fact, a state of siege had never yet been declared and it was to be hoped that it never would.

12. All places of detention in Portugal had been established and were organized in accordance with the law. The rights of accused persons in police custody and the period of pre-trial detention were set out in article 32 of the Constitution on safeguards in criminal proceedings. For example, the accused had the right to choose and to be assisted by counsel at all stages of the proceedings, and the cases and stages in which such assistance was compulsory were specified by law. Under article 28 of the Constitution, on remand in custody, if there was no charge, the detention had to be validated or continued by an order within 48 hours, the court had to hear the reasons for the detention, inform the prisoner thereof, interrogate the latter and allow him or her the chance to defend him or herself. A detained person could choose his lawyer or ask for one to be appointed.

13. The maximum period of police custody before a person was brought before a judge was specified in the Constitution and could never be more than 48 hours. The maximum period of pre-trial detention was indicated in article 215 of the Code of Criminal Procedure; it was 6 months if the accused had not been charged, 10 months if the investigation had taken place and no committal for trial or dismissal of the case decision had been handed down, 18 months if no sentence had been pronounced by the court of first instance, and 2 years if the sentence had not been handed down. Those periods were respectively 8 months, 1 year, 2 years and 30 months in the case of offences punishable by imprisonment of over 8 years or certain specific offences such as drug trafficking, offences under air or maritime navigation regulations, and offences against national integrity and independence.

14. He noted that pre-trial detention was of a limited and quite exceptional nature, and subject to very strict conditions and procedures laid down by law. The decision was taken by a judge, who was required to review it every three months. If a person had reason to believe that his detention was illegal for some reason or another (outside authorized places of detention or beyond authorized limits) he could, exceptionally, make an application for habeas corpus.

15. In accordance with the Constitution and the provisions of the Code of Criminal Procedure, a judicial decision on imprisonment had to be communicated to a member of the prisoner's family. Moreover, as soon as a person was detained he had to be informed of his rights. A document on the subject was given to him and explained. It informed the prisoner of his right to communicate with a lawyer, to inform his family, to refuse to reply, to be brought before a judge within 48 hours, to ask for a doctor at any time and, if necessary, to avail himself of the services of an interpreter. The document was available in Portuguese and four other languages.

16. In reply to a question from the Rapporteur concerning access to places of detention, he explained that the public prosecutor could, without prior notification, visit any place of detention within his territorial jurisdiction. Every member of the public prosecutor's department was allowed free access to penitentiary establishments.

17. Replying to Mr. Dipanda Mouelle he said that in accordance with article 32, paragraph 6, of the Constitution, no evidence obtained under torture was allowed before a court. The same was true of any wrongful interference in private life (telephone tapping, photographs taken in an intimate context, etc.).

18. He explained, in reply to Mr. Sorensen's general question, that the Physicians' Code of Ethics was a set of rules of conduct governing the exercise of the medical profession. If a medical practice was impugned, only the Medical Association, a body quite independent of the State, was competent to take disciplinary measures. In the case of an actual offence, the courts had jurisdiction.

19. Mrs. MOTA MATOS (Portugal) reviewed the legal and constitutional regime governing extradition, which was covered by article 33 of the Constitution. That article set out the principles of non-extradition for Portuguese nationals and non-extradition on political grounds or for crimes punishable by death, as well as the principle that a decision to extradite could be taken only by the judicial authorities. The Constitution proclaimed other principles, including that of non-extradition in cases of crimes punishable by imprisonment for life. Portugal's reservations to the European Convention on Extradition and the European Convention for the Prevention of Terrorism were based on those principles: Portugal did not authorize extradition if the offences involved were punishable by death or by imprisonment for life in the applicant State. The desire to put those constitutional principles into practice had resulted in the adoption of Decree-Law No. 43 of 1991, article 6 of which stated that any request for cooperation in connection with a request for extradition would be refused if the person concerned was likely to be punished by death or imprisonment for life. In the event of a refusal to

extradite, the person concerned could nevertheless be brought before a judge. That provision also applied to the non-extradition of Portuguese nationals: a sentence could be pronounced even if extradition was refused.

20. She recalled that Portugal had been the first country to abolish the death penalty in 1852, and that no death sentence had been carried out since 1846. The philosophy behind the Portuguese prison system was firmly rooted in practice and ensured the social rehabilitation of the person concerned. In that connection, she quoted article 30, paragraph 5, of the Constitution which stated that persons convicted to a sentence or a security measure involving deprivation of freedom could enjoy their fundamental rights, save the limitations inherent in the conviction and the requirements of its enforcement.

21. Extradition procedure comprised two phases. The first, administrative phase, fell within the competence of the Government, and entailed an assessment of a political nature to determine whether extradition was appropriate and whether the request was in order. If the request was rejected the procedure was terminated. If the decision was positive the request was sent to the competent authority, namely, the courts. According to the law it was the courts of second instance that were empowered to decide questions of extradition. The judicial stage was then initiated and the court's decision was final and enforceable, and fully binding on the executive.

22. Mr. HENRIQUES GASPAR (Portugal), turning to the more specific questions put by the members of the Committee, replied to Mr. El Ibrashi, who had asked about compensation, redress and State liability. Compensation implied a liability, determined by a court, but also a guilty party able to pay. Redress, which was the responsibility of the State, implied that no one was liable or that the person liable was not solvent. The State was liable whenever one of its servants was guilty of a wrongful act that caused damage to someone, or whenever the State abused its authority.

23. In reply to a question on the effects of orders given by a superior, he referred to article 271 of the Constitution, by virtue of which an official was not held liable if he acted in accordance with an order received from a superior, on condition that he had previously requested confirmation of that order in writing. The duty to obey ceased, however, whenever the carrying out of orders entailed committing a criminal offence.

24. In reply to Mr. Burns, who had asked how amnesty was granted, he said that amnesty was a general measure that could be proclaimed solely by the Assembly of the Republic. For instance, in April 1991, an amnesty law had been enacted on the occasion of the Pope's visit to Portugal. Since 1974 there had been three amnesty laws, all concerning relatively minor criminal offences. Amnesty was always of a general nature, covering all the inmates of a prison and never a specific individual.

25. In reply to questions put by Mr. El Ibrashi and Mr. Khitrin on the jurisdiction and status of military tribunals, he said that such tribunals were provided for by the Constitution, were composed of military personnel and

civilian judges, and dealt with offences that, under the law, were essentially military offences, such as treason, spying and insubordination. Only military personnel were brought before such tribunals.

26. He apologized for being unable to reply at that stage to a question concerning the report of the European Committee for the Prevention of Torture.

27. Mrs. MOTA MATOS (Portugal), replying to questions from Mr. Lorenzo and Mr. Dipanda Mouelle on special safety measures and the use of means of restraint in prisons, said that the special safety measures were provided for by Penitentiary Law No. 265 of 1 August 1979 and could be applied only in exceptional cases, as when there was a danger of escape or serious disturbances in the prison that could not otherwise be avoided. There was no maximum security establishment in Portugal, but three security blocks had been created in central prisons to accommodate prisoners who could not be subjected to the general regime of prison establishments. Special conditions prevailed in those blocks, but the right to correspondence, visits, exercise and medical care was maintained. Special safety measures were applied under medical supervision. For example, the doctor could ask that a prisoner should be dispensed from the regime and inmates had various possibilities of appealing to national authorities and the European Commission of Human Rights. The use of means of restraint (handcuffs, etc.) was also specified by law and always had to be the subject of a written report setting out the conditions that had necessitated their use.

28. Mr. HENRIQUES GASPAR (Portugal) reviewed a number of cases connected with allegations of torture and ill-treatment which had been the subject of reports from human rights organizations. Following a judicial inquiry, some of the complaints had resulted in the suspects being charged, some had been dismissed for want of proof and yet others were in abeyance pending an investigation. Copies of some of the sentences handed down had been sent to Amnesty International. Moreover, a complaint by five German prisoners to the European Commission of Human Rights in Strasbourg had been found inadmissible by that body. In conclusion, he said that the Portuguese authorities deplored the cases of ill-treatment that had resulted in police and prison officials being charged, but pointed out that those were isolated cases, very few in number, and that the guilty parties had invariably been obliged to resign.

29. The Portuguese delegation withdrew.

The public part of the meeting was suspended at 5.10 p.m. in order to allow consideration of the draft conclusions on the initial report of Portugal in a closed part of the meeting; the public part of the meeting resumed at 5.50 p.m.

30. The members of the Portuguese delegation resumed their places at the Committee table.

31. Mr. BEN-AMMAR (Country Rapporteur) read out the Committee's conclusions as follows:

"1. The Committee against Torture, at its 166th and 167th meetings on Tuesday, 16 November 1993, considered the initial report of Portugal

submitted under article 9 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It listened with interest to the oral presentation and to the explanations and clarifications of the Portuguese delegation. After deliberation, the Committee adopted the following conclusions:

"2. The Committee against Torture notes with satisfaction that the report of Portugal is in conformity with its general guidelines on the presentation of the initial reports to be submitted by States parties under article 9, paragraph 1, of the Convention. It greatly appreciated the spirit of trust and fruitful cooperation that characterized the dialogue that took place with the delegation. However, the Committee noted with regret that the report had been submitted more than three years late, contrary to the provisions of article 19, paragraph 1, which states that States parties should submit initial reports within one year after the entry into force of the Convention for the State party concerned.

"3. The Committee expresses its appreciation for the efforts made by the State party in the constitutional and in legislative fields to ensure that its legal system is in conformity with the Convention. Those efforts seem to be the expression of a genuine desire to create the conditions necessary to protect the physical and moral integrity of individuals and to prevent the practice of torture and cruel, inhuman or degrading treatment.

"4. In particular the Committee appreciates the fact that the Constitution of Portugal states that duly ratified international conventions are directly applicable and directly binding on all public and private bodies and affirms the joint liability of the State, its public bodies and officials in civil matters, and the invalidity of evidence obtained under torture. The Committee also appreciates the fact that the Constitution clearly proclaims that the right to physical integrity cannot be called in question when the country is under a state of siege or a state of emergency. It considers as positive the objectives of the institutions set up to protect and promote human rights, including the Provedor de Justiça, and the broad teaching, training and information programme being carried out to that end.

"5. However, the Committee against Torture notes with regret that, despite those efforts, ill-treatment and occasionally acts qualified as torture continue in police stations and other places of detention throughout the country, as well as the fact that investigations into such allegations are often embarked upon rather late, that they last too long and that offenders are not always brought to court. That situation, together with the lightness of the sentences imposed, creates an impression that the culprits act with relative impunity - an impression that can have a very adverse effect on the implementation of the provisions of the Convention. The Committee also considers that the duration of pre-trial detention, both in law and practice, is a negative factor. Moreover, it regrets the treatment of the territory of Macao, under Portuguese administration until December 1999, owing to the non-application of the Convention against Torture to that territory.

"6. The Committee against Torture recommends:

That the next periodic report of the State party should be submitted within the time-limit laid down in the Convention;

That the State party should continue its efforts, particularly with respect to the reform of the Penal Code and the Code of Criminal Procedure, to ensure that its legislation is fully in conformity with the provisions of the Convention;

That it should establish machinery for the systematic review of interrogation rules, instructions, methods and practices, particularly at police stations, as stipulated in article 11 of the Convention, and ensure that such machinery is sufficiently effective, as required by article 2, to give full effect to the commitments assumed and to implement the provisions of the Convention;

That it should extend the application of the Convention to Macao, in accordance with article 2, paragraph 1, of the Convention.

"7. The Committee against Torture takes note of the undertakings given by the Portuguese delegation and is convinced that Portugal will spare no effort to fulfil them."

32. Mr. HENRIQUES GASPAR (Portugal), speaking for his delegation, thanked the Committee for its comments and recommendations, which he had noted and would transmit to his Government immediately.

33. The CHAIRMAN said that the conclusions of the Committee would shortly be transmitted in writing to the Portuguese delegation, which he thanked for having taken part in a fruitful dialogue, marked by a spirit of trust.

The meeting rose at 6 p.m.